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Supreme Court, U.S.
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No.

IN THE

SUPREME COURT OF THE UNITED STATES

Geoffrey Franklin Finn, Sui Juris
Petitioner,

v.

STATE OF INDIANA,
Respondents.

On Petition For Writ Of Certiorari
To The Indiana Supreme Court

PETITION FOR WRIT OF CERTIORARI

Geoffrey Franklin Finn,
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Facility
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42 pp

QUESTIONS PRESENTED FOR REVIEW

1. Whether an Indiana statute, Indiana Code 9-13-2-105(a), violates the Supremacy Clause of the Constitution, Art. 6, cl. 2, because it conflicts with valid federal law, 18 U.S.C. chapter 2, sec. 31.
2. Whether an Indiana statute, Indiana Code 9-13-2-105(a), infringes on vested property rights protected by the Due Process Clause of the Fifth and Fourteenth Amendments to the Constitution, (substantive due process).
3. Was it plain error, and hence did it deprive petitioner of a fair trial under the Sixth Amendment to the Constitution to give Indiana Code 9-13-2-105(a) as a jury instruction.
4. Was the material difference between someone using the public roads for private purposes versus someone using the public roads for profit or gain relevant at the criminal trial of the petitioner.

PARTIES

Petitioner	Respondent
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PETITION FOR A WRIT OF CERTIORARI

Geoffrey Franklin Finn, pro se, respectfully petitions for a writ of certiorari to review the judgement of the Indiana Supreme Court in this case.

OPINIONS BELOW

The opinion of the Indiana Supreme Court (App. p. 1A-2A) is unreported. The memorandum decision of the Indiana Court of Appeals (App. p. 3A-13A) is unreported. The Writ of Certiorari issued by the chief judge of the Indiana Court of Appeals is set forth in the Appendix, pages 14A-16A. [1]

JURISDICTION

The Supreme Court of Indiana entered its judgment on July 18, 2001. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a) and 28 U.S.C. § 2102 (priority of criminal case on appeal from State court).

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

Article VI, Clause 2, of the United States Constitution provides that "This Constitution ... shall be the supreme law of the land; and the judges in every state ... to the contrary notwithstanding."[2] The Fifth and Fourteenth Amendments to the United States Constitution, (due process

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[1] The judgment of the Indiana Supreme Court is set forth in the Appendix, pages 1A-2A. The decision of the Indiana Court of Appeals is set forth in the Appendix, pages 3A-13A.

[2] All the constitutional and statutory provisions involved are set forth verbatim in the Appendix, pages 17A-20A.

clause). The Sixth Amendment to the United States Constitution, (right to a fair trial).

Indiana Code statutes, 9-13-2-105(a); 9-13-2-118; 9-30-5-2; 9-30-10-17; 35-44-3-3(b)(1).

California Statutes, Forty Sixth Session, Chapter 412, § 1 (b).

18 U.S.C. chap. 2, sec. 31; 18 U.S.C. § 1257(a); 18 U.S.C. 2102.

Indiana Constitution, Art. 1, sec. 19.

STATEMENT

Petitioner is a Citizen of the United States of America. On October 8, 1998, petitioner was charged by the State of Indiana with three criminal counts, all of which contain the element "Operating a motor vehicle".[3] On November 23, 1998, the petitioner filed a motion to dismiss the charges alleging that the activity that the State of Indiana had charged as criminal was in reality a vested right protected by the due process clause of the Fifth and Fourteenth Amendments to the United States Constitution. The charging statutes where also challenged as being repugnant to the Supremacy Clause, Art. VI, cl. 2, of the United States Constitution. This motion was prepared and filed by petitioner, pro se. The motion was denied on December 29, 1998.

On August 23, 1999 the petitioner was forced to defend himself at trial and act as his own attorney because legal counsel that would propagate his already established defense could not be found. Sympathetic stand-by counsel was found.

Since the Indiana Constitution has a section that allows the jury in all criminal cases to judge the law and the facts of the case, (Article I, section 19), the petitioner went to trial with the belief that the jury would be allowed to hear his

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[3] The charging statutes are set forth in the Appendix, page 18A.

constitutional claims as evidence through witness testimony.

The essential element in common to all three charging statutes is 'Operating a motor vehicle'. The federal statutory definition of a motor vehicle, which states that a motor vehicle is a vehicle that is "used for commercial purposes", conflicts with the Indiana State definition, which states that a motor vehicle is "any vehicle that is self-propelled".[4] Many published opinions state that "the business of carrying or transporting property for hire is a privilege, the licensing, regulation and control of which is a legislative prerogative".[5]

The federal statutory law and many published opinions all supported petitioner's legal defense and constitutional claims. Petitioner's situation was very similar to the case of *Cheek v. U.S.*, 498 U.S. 192, wherein this court stated "but it is not contrary to common sense, let alone impossible, for a defendant to be ignorant of his duty based on an irrational belief that he has no duty, and forbidding the jury to consider evidence that might negate willfulness would raise a serious question under the Sixth Amendments jury trial provision." at 203. Thru testimony at trial the petitioner was trying to show the jury that he did not believe he had willingly violated a known legal duty. This testimony was not allowed to be heard by the jury. The trial court, in its refusal on offer to prove, stated that "We're not going to allow the jury to hear it. I'm not going to allow the jury to hear it." R. 326.[6] From the beginning, this case has been one of mixed questions of law and fact. The jury was denied its right under the Indiana Constitution to judge the law of the case as the testimony was refused. If the law cited by petitioner is applied, the facts are in petitioner's favor. At

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[4] Both motor vehicle statutes are set forth in the Appendix, pages 18A-19A.

[5] *City of Chattanooga v. Fanburg*, (1954) 196 Tenn. 226, 265 S.W.2d 15, 19. Several like opinions will be cited throughout this petition.

[6] The record before the Indiana Supreme Court is cited as "R".

any rate the jury returned a verdict of guilty and petitioner appealed.

On appeal, the Indiana State definition of a motor vehicle was challenged as being in violation of the United States Constitution, "that the definition is pre-empted by federal law, [under the Supremacy Clause], violates due process, [substantive due process], and is void for vagueness."[7] Also challenged as erroneous was the state definition of a motor vehicle given as a jury instruction and that it was abuse of the trial court's discretion to refuse the testimony of the primary defense witness. Petitioner's conviction was affirmed and petitioner alleges that the state courts are unduly inclined to favor state action.

Petitioner's brief in the Indiana Court of Appeals argued that (1) the state definition of a motor vehicle was repugnant to the Supremacy Clause of the United States Constitution under the 'conflict pre-emption' doctrine, (2) that the state definition was violative of the Due Process Clause of the Fifth and Fourteenth Amendments of the United States Constitution because it infringed on vested property rights, (3) that the charging statutes were void for vagueness because the "prohibitions are not clearly defined", (4) that to give the state definition as a jury instruction was plain or fundamental error because "the error was of such great magnitude that the outcome of the trial was changed."[8], and (5) that "the excluded testimony was the primary evidence in support of the defendant's defense and constitutional claims and its exclusion must have had a substantial effect on the jury."[9] The charging statutes where also challenged as they omit a necessary element, but this issue was deemed to be waived for failure to present cogent argument. (App. p. 10A).

The appellate court on the Supremacy Clause issue, stated that "There is, therefore, no implied conflict between the

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[7] Opinion, Indiana Court of Appeals, Appendix page 7A.
[8] BRIEF OF APPELLANT, page 13.
[9] BRIEF OF APPELLANT, page 23.

statutes." *Id.* at 8A. This was assumed so because "This is entirely different subject matter than that which the Indiana definition applies in the instant case,..." *Id.* at 8A. Both definitions are given as jury instructions in both federal and state criminal trials.

On the substantive due process argument, in it's denial of a vested property right, the appellate court stated "Further, the public does not have a fundamental right to use the roads." [10] *Id.* at 9A.

The petitioner, in arguing that the charging statutes were void for vagueness was told that "Here, he simply harkens back to his mantra[11] that a motor vehicle can only be a vehicle that is used for commercial purposes." *Id.* at 9A.

Because the petitioner was arguing that a jury instruction was erroneous and the jury instructions were not included in the record, petitioner requested that the appellate court order them from the trial court clerk. This was done by way of writ of certiorari, ordered by the chief judge of the Indiana Court of Appeals. *Id.* at 14A-16A. But later, when another judge entered the decision, it was stated in the opinion that "As it was Finn's duty to provide a record that reflects the error alleged, this issue is waived for our review." *Id.* at 10A.

The appellate court, in upholding the trial court's decision not to allow the witness to testify, stated that "Here, the trial court did not abuse its discretion in refusing to allow Thomas to testify, as the distinction Finn sought to establish was not relevant." *Id.* at 12A.

On July 18, 2001, the Indiana Supreme Court refused to transfer jurisdiction of the case. *Id.* at 1A-2A.

REASONS FOR GRANTING THE WRIT

The argument for review is substantial and fundamental to the notions of liberty and justice. As to the merits, that

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[10] Citing *Mitchell v. State*, 659 N.E.2d 112, 116 (Ind. 1995).

[11] Mantra-a sacred formula...used in prayer and incantation.

argument is made in large measure simply by comparing the challenged state law to the federal law it conflicts with and by citation of the published opinions that support petitioners substantive due process argument. The challenged state law deprives many multitudes of citizens of the right to use the public roads for private purposes and to travel upon them by any mode of conveyance they should desire to use, without license. The whole population of this nation at one time exercised this right.

The opinion below has blurred the real issue of this case. It would appear that this vested property right has been completely eviscerated from the private life of the nation. Whose interests are served when the people's rights are extinguished by those that are elected to serve them? But what of the citizens who may choose to exercise this right, even in the face of arbitrary arrest and seizure, who are consciously refusing to give up their liberty to license because they know it is in the spirit of the great founders of this country. Are these citizens not forever protected by the Constitution? If the Constitution does not furnish this protection, then the people have lost any protection against arbitrary government.

I. THE DECISION BELOW SQUARELY CONFLICTS WITH THE MANDATES OF THE CONSTITUTION AND WITH THIS COURTS DECISIONS CONCERNING THOSE MANDATES.

The Constitution of the United States has been the fundamental law of this nation for over two hundred years. Article VI, cl. II states that "This Constitution, and the laws of the United States which shall be made in pursuance thereof;...shall be the Supreme law of the land." On this point of law, there can be no argument. Under this clause, any state law that conflicts with the Constitution or federal law must give way. The importance of the state law or it's materiality is not relevant. "The relative importance to the state of it's own law is not material when there is a conflict

with a valid federal law, for the framers of our Constitution provided that the federal law must prevail." *Free v. Bland*, 369 U.S. 663, 666. This decision also clearly spelled out the history of the Supremacy Clause. "This principal was made clear by Chief Justices Marshall when he stated for the Court that any state law, however clearly within a state's acknowledged power, which interferes with or is contrary to federal law, must yield."[12] *Id.* at 666.

This is a claim of 'conflict pre-emption'. Any state law that conflicts with federal law must be invalidated. "The Supremacy Clause requires invalidation of any state constitutional or statutory provision that conflicts with federal law." *Elizabeth Blackwell Health Center for Women* v. *Knoll*, 61 F. 3rd 170, 178 (3rd Cir. 1995).[13] State law that conflicts with federal law is supposed to be without effect. "By virtue of the Constitution's Supremacy Clause, it has long been settled that 'state law that conflicts with federal law is "'without effect.'" *Goodlin v. Medtronic, Inc.*, 167 F.3d 1367, 1370-71 (11th Cir. 1999).[14] (footnote omitted).

The state appellate court below has acknowledged this firm rule of law when it stated that "State or local law which conflicts with federal law is 'without effect.'" *In Re Guardianship of Wade*, 711 N.E.2d 851, 853 (Ind. App. 1999).[15]

But even when the petitioner stated clearly in his BRIEF OF APPELLANT that "Under the conflict preemption doctrine of the Supremacy Clause of the United States Constitution, the state law is preempted and is 'without effect',..."[16] the appellate court chose to state somewhat sarcastically and erroneously that "Finn appears to base his argument on implied conflict pre-emption."(App. p. 8A).

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[12] Citing, inter alia, *Gibbons v. Ogden*, 9 Wheat. 1, 210-211, 6 L.Ed. 23.

[13] Citing *Reynolds v. Sims*, 377 U.S. 533, 584.

[14] Citing, inter alia, *M'Culloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 427, 4 L.Ed. 579 (1819).

[15] Citing *Cipollone v. Ligget Group Inc.*, 505 U.S.504, 516.

[16] BRIEF OF APPELLANT, page 2.

The claim was clearly based on "the conflict preemption doctrine of the Supremacy Clause ...". But the point here is that the word "implied" has suddenly appeared and is added to the rule, allowing the court to incorrectly apply the rule in this case. The reasoning used by the appellate court is that because both statutes apply to different subject matter there is no "implied" conflict. This would appear to be convenience for convenience sake.

This argument does not adhere to the mandates of the Supremacy Clause as already set forth. Since both statutes apply to different subject matter, then this must mean that the State of Indiana has a policy concerning motor vehicles that is contrary to the policy concerning motor vehicles that has been established by the U.S. Congress under it's power to regulate interstate commerce. This:

> "is quite inadmissible because it presupposes what in legal contemplation does not exist. When Congress, in the exertion of the power confided to it by the Constitution, adopted that act, it spoke for all the people and all the states, and thereby established a policy for all. That policy is as much the policy of [the state] as if the act had emanated from it's own legislature, and should be respected accordingly in the courts of the state." *Howlett By and Through Howlett v. Rose*, 496 U.S. 356, 371.[17]

The federal policy and law concerning motor vehicles is not being followed by the courts of the State of Indiana and petitioner submits that this has caused two different systems of jurisprudence to govern daily living in the United States in gross violation of the mandates of the United States Constitution because:

> "The laws of the United States are laws in the several states, and just as much binding on the citizens and courts thereof as the state laws are... The two together form one system of jurisprudence, which constitutes the law of the land for the state; and the courts of the

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[17] Citing, inter alia, *Mondou*, 223 U.S., at 57.

two jurisdictions are not foreign to each other, nor to be treated by each other as such, but as courts of the same country, having jurisdiction partly different and partly concurrent." *Howlett By and Through Howlett* v. *Rose, Id.* at 367.[18]

It would be relevant to note at this time that there is at least one other definition of a motor vehicle in Title 18 of the United States Code, Crimes and Criminal Procedure. But the jury instruction given in *United States v. Lowe*, 65 F.3d 1137, 1146-47 (C.A. 4 (W.Va.) 1995). is the following:

"I want to define a motor vehicle for you. Under Section 33, the definition of a motor vehicle includes contrivances such as trucks which are used for commercial purposes on the highways in the transportation of passengers or property."

"A motor vehicle is used for commercial purposes if it is used for the carriage of persons or property directly or indirectly in connection with any business or other undertaking intended for profit."

So the federal definition of a motor vehicle should be the definition used in criminal trials in the state courts. But since either the Vanderburgh Circuit Court Clerk did not comply with the WRIT OF CERTIORARI issued by the chief judge of the appellate court or somehow it was not placed in the record when it arrived, etc., etc., we do not know exactly what jury instruction was given.

Considering the grave constitutional question involved, the rights of all citizens of this nation are implicated when state courts refuse to adhere to the mandates set forth by the Constitution of the United States. It is highly probable that if two systems of jurisprudence are governing the daily living of the American people, then the courts of Indiana are operating outside of the boundaries allowed by the United States Constitution. Review should be granted so this significant matter can be put to rest.

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[18] Citing, inter alia, *Claflin v. Houseman*, 93 U.S. 130, 136-137 (1876).

II. THE DECISION BELOW IGNORES VESTED PROPERTY RIGHTS PROTECTED BY THE DUE PROCESS CLAUSE OF THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

In light of the fact that organizations like MADD (Mothers Against Drunk Drivers) have demanded and put pressure on state and local governments, it is not surprising that the Indiana appellate court below ruled as it did. But the law is the law and the petitioner submits that the lower court was not at liberty to ignore it. Petitioner does not make this statement lightly and certainly not without a heavy heart.

Petitioner from the beginning of this case has claimed the right to use the public roads for movement and travel by any mode of conveyance he should desire to use, without license. One of the earliest decisions concerning this right must be *Macomber v. Nichols*, 34 Mich. 217, 22 Am. Rep. 522, (1876), wherein the court stated that:

> "When the highway is not restricted in its dedication to some particular mode of use, it is open to all suitable methods, and it cannot be assumed that these will be the same from age to age, or that new means of making the way useful must be excluded merely because their introduction may tend to the inconvenience or even to the injury of those who continue to use the road after the same manner as formerly. A highway, established for the general benefit of passage and traffic, must admit of new methods of use whenever it is found that the general benefit requires them."

In 1890, the Kansas Supreme Court stated that "Each citizen has the absolute right to choose for himself the mode of conveyance he desires, whether it be by wagon or carriage, by horse, motor or electric car, or by bicycle, or astride of a horse..." *Swift v. Topeka*, 43 Kan. 671, 23 Pac. 1075, 1076 (1890).

In 1905, the Indiana Supreme Court established the common law rule of negligence to afford redress to citizens injured on the public highways.

"It cannot be said, as a matter of law, that appellant was guilty of negligence for using an automobile as a means of conveyance on the public highway... The law does not denounce motor carriages, as such, on the public ways... they have an equal right with other vehicles in common use to occupy the streets and roads... It is, therefore, the adaptation and use, rather than the form or kind of conveyance, that concerns the courts." *Indiana Springs Co. v. Brown*, 74 N.E. 615, 616, 165 Ind. 465.

In 1922, the Indiana Supreme Court had this to say concerning a challenge to a city ordinance. "The objection that the ordinance deprives appellant of property without compensation is unfounded. It does not interfere with his right to pass over the streets, and to do anything in the streets which is incident to their use for purposes of public travel." *Frick v. City of Gary*, 135 N.E. 346, 347, 192 Ind. 76.

In 1925, once again the Indiana Supreme Court spoke concerning this right.

The appellant claims that the use of the streets of a city is a right and not a privilege, and because of that he cannot be prevented from operating his jitney bus on the streets of Muncie as provided in said section 9. The public streets are for the use of the public, and may be used for general ordinary use. But the use of a street to carry on a private business is a mere privilege, and not a natural right. *Denny v. City of Muncie*, 149 N.E. 639, 641, 197 Ind. 28. (emphasis mine).

In 1941, the Indiana Court of Appeals stated that "The traveling public is entitled to make free use of the highways and streets..." *Pitcairn v. Whiteside*, 34 N.E.2d 943, 946, 109 Ind. App. 693.

This Court agreed wholeheartedly with the foregoing opinions in *Stephenson v. Binford*, 287 U.S. 251, 264.

"First. It is well established law that the highways of the state are public property; and that their primary and

preferred use is for private purposes; and that their use for purposes of gain is special and extraordinary, which generally at least, the legislature may prohibit or condition as it sees fit."[19]

Petitioner assumes that this is the "mantra" that the lower state appellate court is referring to in its opinion. In light of the foregoing published opinions, the appellate court still chose to say that "the public does not have a fundamental right to use the roads."(App. p. 9A).

This Court in *Hodge-Drive-It-Yourself v. Cincinnati*, 284 U.S. 335, specifically stated that there is a material difference between someone using the streets for private purposes and someone using them for gain.

"Unquestionably, appellants contemplate that those hiring their cars will operate them upon the streets. In fact such use is essential to appellant's business. It is a special and extraordinary use materially differing from operation of automobiles or trucks by owners or chauffeurs in the usual way for private ends..." at 337.

This Court recently stated that "Passengers, no less than drivers, possess a reduced expectation of privacy with regard to the property that they transport in cars." *Wyoming v. Houghton*, 526 U.S. 295, 303. If passengers and drivers are involved in transporting property, i.e., using the roads for gain, they must be commercial terms. This is all highly relevant because at the trial of the cause the arresting officer was asked on cross-examination if the petitioner/defendant was using the roads for profit or gain and the reply was "Not that I am aware of."[20] (R. 244).

Since the petitioner was not using the roads for profit or gain then he must have been exercising his right to use the public roads for movement and travel. This right is a protected property right. "Rights that have become vested by judgment constitute property protected from legislative

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[19] Citing, inter alia, *Hodge-Drive-It-Yourself v. Cincinnati*, 284 U.S. 335, 337.

[20] BRIEF OF APPELLANT, page 13.

interference." *United States v. Board of Educ. of City of Chicago*, 588 F.Supp 132, 235 (1984).[21] And "It is not within the power of a legislature to take away rights which have been once vested by a judgment." *Plyler v. Moore*, 100 F.3d 365, 374 (5th Cir. 1996).[22]

This Court has stated that "we have regularly observed that the Due Process Clause specifically protects those fundamental rights and liberties which are, objectively, 'deeply rooted in this Nations history and tradition,'" *Washington v. Glucksberg*, 521 U.S. 702, 720-21.[23]

As we have seen the right in question was once "deeply rooted in this Nations history and tradition" until the legislature of the State of Indiana decided to make all self propelled vehicles "motor vehicles".[24]

Petitioner submits that the courts of the State of Indiana, by their own constitutional standards, were not at liberty to ignore or deny the vested rights of the petitioner. "Fundamental Constitutional guarantees are absolute and outside the discretion of any court to ignore or deny." *Branan v. State*, 316 N.E.2d 406, 408 (Ind. App. 3rd Dist. 1974).

The right in question is held at the mere will of the nations police officers which places the petitioner in slavery. "For the very idea that one man may be compelled to hold... any material right essential to the enjoyment of life, at the mere will of another, seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself." *Yick Wo v. Hopkins, Sheriff*, 188 U.S. 356, 370.

So liberty will always prevail, it has been said that "Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them." *Miranda v. Arizona*, 384 U.S. 436, 491.

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[21] Citing *McCullough v. Virginia*, 172 U.S. 102, 123-24 (1898).

[22] Citing *McCullough*, supra, 172 U.S. at 123.

[23] Citing *Moore v. City of East Cleveland, Ohio*, 431 U.S. 494, 503.

[24] Petitioner is confined in a state institution and does not have access to the legislative history of the statute at this time.

Mr. Justice Brandeis, in his dissenting opinion in *Olmstead v. U.S.*, 277 U.S. 438, 572-73 (1928), had this to say concerning liberty: "Experience should teach us to be most on our guard to protect liberty when the government's purposes are beneficent. Men born to freedom are naturally alert to repel invasion of their liberty by evil minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding." (footnote omitted).

CONCLUSION

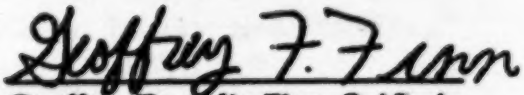
Does the maxim that government exists to protect the life, liberty, and property of its citizens still exist? Or have we as a nation traveled so far down the socialist road that all rights are subordinate to the public or common good? Mr. Justice Daniels said in 1849 that "Once let the barriers of the Constitution be removed, and the march of abuse will be onward and without bounds."

Unlike some terms, the American people understand the term rights, even though they may not know what all their rights are. Our rights are part of our national heritage and our servicemen fight and die for them. They constitute our being. They are the elements of, and the essence of man's cherished passion to live free from restraint.

It is instinctive with Americans to believe that government protects their rights and the infringement of them will generally arouse indignation. The American people consent to obey competent civil servants who follow rationally established rules that adhere to the supreme law, the Constitution. Has the abandonment of the distinction between true and false that appears to pervade our political system now spread irrevocably to our legal system as well? Has the consent of the American people to be dominated by legitimate violence become the means to enslaved them? Is moderation the only wise virtue because we have become dependant on the prejudices of the powerful? These questions must be asked and answered properly if our

nation is to survive and prosper as a free nation. The petitioner, for any or all of the foregoing reasons for review, prays that this Court grant review of this case, and or grant summary reversal as an appropriate disposition.

Respectfully Submitted,



Geoffrey Franklin Finn, Sui Juris
Petitioner Pro Se
Branchville Correctional Facility
P.O. Box 500
Tell City, Indiana 47586

APPENDIX
PAGES 1A-20A

CLERK
SUPREME COURT, COURT OF APPEALS,
AND TAX COURT
STATE OF INDIANA
217 STATE HOUSE, INDIANAPOLIS, IN 46204
317-232-1930 FAX 317-232-8365

	Cause Number
FINN, GEOFFREY #862352	82A01-0007-CR-00243
P.O. BOX 500	Lower Court Number:
TELL CITY, IN 47586	82C019810CF962

FINN, GEOFFREY V. STATE OF INDIANA

You are hereby notified that the SUPEME COURT has on this day 7/18/01

THIS MATTER COMES BEFORE THE INDIANA SUPREME COURT ON A PETITION TO TRANSFER FROM A DECISION OF THE COURT OF APPEALS, PURSUANT TO INDIANA APPELLATE RULE 57. THE COURT HAS REVIEWED THE DECISION OF THE COURT OF APPEALS, THE RECORD OF PROCEEDINGS, THE BRIEFS WHICH WERE FILED IN THE COURT OF APPEALS, AND THE MATERIALS WHICH WERE SUBMITTED IN CONNECTION WITH THE REQUEST TO TRANSFER JURISDICTION. EACH PARTICIPATING MEMBER OF THE COURT HAS VOTED ON THE CASE. EACH PARTICIPATING MEMBER OF THE COURT HAS HAD THE OPPORTUNITY TO VOICE THAT JUSTICES VIEWS ON THE APPEAL IN CONFERENCE WITH THE OTHER JUSTICES.

BEING DULY ADVISED, THE COURT NOW DENIES THE APPELLANT'S PETITION TO TRANSFER.

RANDALL T. SHEPARD, CHIEF
JUSTICE ALL JUSTICES CONCUR

WITNESS my name and the seal of said Court,

this 18TH day of JULY, 2001

"s/Brian Bishop"
Clerk Supreme Court, Court of
Appeals, and Tax Court

CLERK
SUPREME COURT, COURT OF APPEALS,
AND TAX COURT
STATE OF INDIANA
217 STATE HOUSE, INDIANAPOLIS, IN 46204
317-232-1930 FAX 317-232-8365

	Cause Number
FINN, GEOFFREY #862352	82A01-0007-CR-00243
P.O. BOX 500	Lower Court Number:
TELL CITY, IN 47586	82C019810CF962

FINN, GEOFFREY V. STATE OF INDIANA

You are hereby notified that the COURT OF APPEALS has on this day 4/25/01 ISSUED THE ENCLOSED OPINION:

WITNESS my name and the seal of said Court,

this 25th day of APRIL, 2001

"s/Brian Bishop"
Clerk Supreme Court, Court of
Appeals and Tax Court

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

APPELLANT PRO SE:

GEOFFREY FINN
Tell City, Indiana

ATTORNEYS FOR APPELLEE:

KAREN M. FREEMAN-WILSON
Attorney General of Indiana

ADAM DULIK
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

GEOFFREY FINN, Appellant-Defendant,	)	
vs.	)	No. 82A01-0007-CR-243
STATE OF INDIANA, Appellee-Plaintiff.	)	

APPEAL FROM THE VANDERBURGH CIRCUIT COURT
The Honorable David D. Kiely, Magistrate
Cause No. 82C01-9810-CF-962

April 25, 2001

MEMORANDUM DECISION-NOT FOR PUBLICATION

FRIEDLANDER, Judge

Geoffrey Finn appeals his convictions of Operating a Motor Vehicle While Privileges Are Forfeited For Life,[1] a class C felony, Resisting Law Enforcement,[2] a class D felony, and Operating a Vehicle While Intoxicated,[3] a class A misdemeanor. Finn was also found to be a habitual offender. To the extent that we can decipher the issues raised by Finn in his pro se appeal, we consolidate and restate them as follows:

1. Is Indiana's statutory definition of "motor vehicle" constitutional?
2. Was it erroneous to include the statutory definition of "motor vehicle" in the final instructions?
3. Was Finn's driving record improperly admitted into evidence?
4. Did the trial court properly exclude the testimony of a magazine publisher from whom Finn sought to elicit testimony regarding commerce regulations and the law generally?

[1] Ind. Code Ann. § 9-30-10-17 (West 1992).
[2] Ind. Code Ann. § 35-44-3-3 (West 1998).
[3] IC § 9-30-5-2.

We affirm.

The facts most favorable to the convictions are as follows. On October 6, 1998, Deputy Sheriff Eric Herrmann observed Finn behind the wheel of a 1983 Chevy truck revving the engine. Finn then pulled out in front of Deputy Herrmann, nearly striking his patrol car. Deputy Herrmann had to brake in order to avoid being struck. As Deputy Herrmann followed, he observed Finn's truck weaving and crossing the center line. Deputy Herrmann activated his emergency lights and siren when he realized that Finn was not going to stop at a red light. They proceeded through the red light. Finn's vehicle struck a concrete barrier several times as he approached another intersection. Finn made a left turn against a red light and then eventually pulled into a parking lot and stopped.

Deputy Herrmann walked up to Finn's vehicle and asked Finn to roll down the window and provide his driver's license. Finn cracked the window open, threw a copy of the United States Constitution on the ground, and rolled the window back up. He refuse to provide his name or license. In response to Deputy Herrmann's questions, Finn repeatedly "scream[ed] at the top of his lungs" that he was violating his constitutional rights and that the deputy should call Judge Maurice O'Connor. *Record* at 228. When Deputy Herrmann eventually asked for whom he should tell the judge he was calling, Finn finally provided his name.

Several officers responded to Deputy Herrmann's call for backup. On of these officers, Officer Jeff Johnson, recognized Finn as someone he knew to have a lifetime suspension of his driving privileges. The officers placed stopsticks on the ground in front of and behind Finn's truck to prevent him from driving away. Finn continued to refuse to exit but cracked his window and threw his keys on the ground. Officer Johnson then sprayed pepper spray through the window, Deputy Herrmann unlocked the door, and they removed Finn from the vehicle and handcuffed him. During the course of these events, Finn appeared to be very

intoxicated, with glassy eyes and slurred speech, and Deputy Herrmann noticed a strong odor of alcohol.

Following a jury trial, Finn was convicted as noted above. Finn chose to represent himself at trial, he similarly proceeds pro se in this appeal.[4]

1.

The heart of Finn's argument on appeal is that Indiana's statutory definition of "motor vehicle" found in Ind. Code § 9-13-2-105(a) (West 1992) violates the Constitution of the United States. He makes several arguments in this regard, including that the definition is pre-empted by federal law, violates due process, and is void for vagueness. We will address each contention in turn.

Finn first asserts that Indiana's definition of "motor vehicle" is pre-empted by a federal definition of the same term, in violation of the Supremacy Clause. U.S. Const. art. VI, cl. 2. The federal definition Finn relies on includes only vehicles used for commercial purposes. *See* 18 U.S.C.A. §31(a)(6) (West 200).[5] On the other hand, IC § 9-13-105(a) generally defines "motor vehicle" as "a vehicle that is self-propelled."

---

[4] We note that Finn makes numerous inappropriate personal attacks against the State's appellate counsel, does not clearly state several of the issues presented for review, provides an inadequate statement of the case and statement of the facts without citation to the record, and generally fails to provide cogent argument. Pro se litigants are required to follow the rules of appellate procedure, and flagrant violation of the appellate rules may constitute waiver of an appeal. *Angleton v. Estate of Angleton*, 671 N.E.2d 921 (Ind. Ct. App. 1996), *trans. denied*. Because we prefer to decide a case upon its merits, however, we will exercise our discretion in this case to reach its merits. *See id.*

[5] The statute provides the following definition:

Motor vehicle.--The term "motor vehicle" means every description of carriage or other contrivance propelled or drawn by mechanical power and used for commercial purposes on the highways in the transportation of passengers, passengers and property, or property or cargo.

Finn appears to base his argument on implied conflict pre-emption. This type of pre-emption "occurs either where it is impossible to comply with both federal and state or local law, or where state law stands as an obstacle to the accomplishment and execution of federal purposes and objectives." *Rogers v. Cosco*, Inc., 737 N.E.2d 1158, 1164 (Ind. Ct. App. 2000), *trans. pending*. We note that courts do not lightly attribute to Congress the intent to pre-empt state or local laws. *Id.* Further, the historic police powers of the states are not to be superseded by federal law unless that was the clear and manifest purpose of Congress. *Id.*

Here, the federal definition that Finn cites clearly does not pre-empt Indiana's definition of the same term. The federal statute specifically limits application of the definition to Chapter 2 of Title 18. [6] Within this chapter, the term is used only in a statute providing for federal prosecution of persons who destroy motor vehicles or motor vehicle facilities. 18 U.S.C.A. § 33. This is entirely different subject matter than that which the Indiana definition applies in the instant case, *i.e.*, licensing and driving a motor vehicle. There is, therefore, no implied conflict between the statutes.

Moreover, our State, in the exercise of its police powers, has the constitutional authority to regulate and control traffic upon the public highways for the purpose of protecting the highways and promoting the safety, peace, health, and general welfare of the people. *See Finney v. State*, 491 N.E.2d 1029 (Ind. Ct. App. 1986). We see no clear and manifest purpose of Congress to supersede Indiana's definition of "motor vehicle" and limit the State's regulation of traffic to commercial vehicles. Indiana's statutory definition of "motor vehicle" is not pre-empted by federal statute.

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[6] We note that other definitions of "motor vehicle" can be found in the United States Code. For example, 18 U.S.C.A. § 2311 (West2000) defines "motor vehicle," as used in Chapter 113, as "an automobile, automobile truck, automobile wagon, motorcycle, or any other self-propelled vehicle designed for running on land but not on rails."

As another part of his constitutional challenge, Finn argues that the definition violates his substantive due process rights guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States. Specifically, he argues that the state is without authority to regulate the use of the public roads for private purposes because citizens have a fundamental and vested right to use the roads for movement and travel.

Finn's argument is unavailing. As noted above, the State, though the exercise of it's police powers, does have constitutional authority to regulate private use of the roads. *See Finney v. State*, 491 N.E.2d 1029. Further, the public does not have a fundamental right to use the roads. *Mitchell v. State*, 659 N.E.2d 112, 116 (Ind. 1995) ("[n]either this Court nor the United States Supreme Court has ever held driving to be a fundamental right"). The public, rather, is entitled to use the roads subject to the State's exercise of its police powers, and "the State need only show that the law bears a rational relationship to a legitimate state interest." *Id.* We hold that the State has a legitimate interest in regulating and controlling traffic upon its public roadways, and a definition that includes private vehicles clearly bears a rational relationship to this interest.

Finn next makes an incoherent argument that the statutes under which he was charged are void for vagueness as applied. Here, he simply harkens back to his mantra that a motor vehicle can only be a vehicle that is used for commercial purposes. As discussed previously, this is not the case. Further, IC 9-30-2-105(a) clearly defines the term "motor vehicle" and an individual of ordinary intelligence driving a 1983 Chevy truck would comprehend that they were driving a motor vehicle as statutorily defined. *See State v. Lombardo*, 738 N.E.2d 653 (Ind. 2000) (noting that a statute will not be found unconstitutionally vague if individuals of ordinary intelligence would comprehend it adequately to inform them of the proscribed conduct and that vagueness challenges to statutes which do not involve First

Amendment freedoms must be examined in light of the facts of the case at hand).

Finn's final constitutional argument is that the charging statutes are repugnant to the constitution because they omit a necessary element. Finn does not cite to a specific constitutional provision or explain how his constitutional rights have been violated in this regard. We find this issue waived for failure to present cogent argument. *See Reyburn v. State*, 737 N.E.2d 1169 (Ind. Ct. App. 2000).

2.

Finn contends that it was fundamental constitutional error or plain error to give the alleged unconstitutional motor vehicle instruction to the jury. The challenged instruction is not included in the record. Finn, rather, simply alleges that an instruction tracking the language of the statutory definition of "motor vehicle" was given to the jury. As it was Finn's duty to provide a record that reflects the error alleged, this issue is waived for our review. *See Williams v. State*, 690 N.E.2d 162 (Ind. 1997).

Notwithstanding the resulting waiver, we have already determined that Indiana's statutory definition survives Finn's constitutional attacks. Therefore the trial court did not err if it gave this instruction to the jury.

3.

Finn next challenges the introduction of his driving record at trial. His argument in this regard is rather convoluted, as was his objection at trial where he objected on the grounds that the evidence was "hearsay and insufficient evidence." *Record* at 245. To the extent that Finn now asserts prejudice in the introduction of his driving record, we find the issue waived for failure to present cogent argument. Further, Finn's failure to object to the introduction of his driving record into evidence on the basis of Indiana Evidence Rule 404(b) waives the issue for appeal. *See Simmons v. State*, 714

N.E.2d 153, 155 (Ind. 1999) ("defendant may not raise one ground for objection at trial and argue a difference ground on appeal").

In reality, this section of Finn's appellate brief seems to focus more on the validity of his underlying license forfeiture. He appears to argue, as he did at trial, that there is insufficient evidence that a valid notice of suspension, including notice of right to seek judicial review, was ever sent to him. This argument is misplaced because "[t]he requirement that a person be notified of his right to judicial review affects the validity of suspensions as an habitual traffic violator, not suspensions for life." *Ford v. State*, 711 N.E.2d 86, 87 (Ind. Ct. App. 1999), *trans. denied*. The State was simply required to show that Finn knew or should have known that his driving privileges had been forfeited for life. *See Austin v. State*, 700 N.E.2d 1191 (Ind. Ct. App. 1998).

Finn's License was suspended for life on May 1, 1986 and again on June 4, 1987 following convictions for traffic related offenses. Moreover, Finn was previously convicted by a jury on March 16, 1995 for operating a motor vehicle after a lifetime forfeiture. He was present at that trial and stipulated, by counsel, as follows:

1. That on June 4, 1987, the Defendant's driving privileges were forfeited for life under Indiana Code 9-12-3-1.
2. That on June 4, 1987, the Defendant was advised in person that his driving privileges were suspended for the rest of his life.
3. That on February 17, 1994, the defendant had full knowledge that his driving privileges had been suspended for life.

Record at 303. This evidence establishes that Finn knew his driving privileges were forfeited for life on October 6, 1998.

4.

Finally, Finn challenges the trial court's refusal to allow the testimony of Jim Thomas, a magazine publisher, after a

detailed offer to prove and testimony outside the presence of the jury. In response to the State's objection, Finn explained, "I'm going to ask him a little bit about commerce regulations and a little bit of law, because of Article I, Clause 19 in the Indiana Constitution says a jury has a right to determine the law and the facts."[7] *Record* at 311-12. Finn argues on appeal that Thomas's testimony "is relevant, material, exculpatory and favorable to the defense because if the defendant was not using the roads for profit or gain, and the only other use is for private purposes, according to law, then no reasonable jury, if informed of the law, would have rendered a verdict that contrary to the facts and law of the case." Appellant's Brief at 22. In essence, Finn was attempting to establish, through Thomas's testimony, a distinction "between the use of the road for private purposes and the uses of the roads for profit or gain." *Record* at 326. The trial court is given wide discretion in determining the admissibility of evidence and in determining its relevancy. *See Albrecht v. State*, 737 N.E.2d 719 (Ind. 2000); *Graham v. State*, 736 N.E.2d 822 (Ind. Ct. App. 2000), *trans. denied*. We will disturb the trial court's ruling only upon a showing of abuse of discretion. *Graham v. State*, 736 N.E.2d 822. Further, only relevant evidence is admissible, which is evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence. *Albrecht v. State*, 737 N.E.2d 719.

Here, the trial court did not abuse its discretion in refusing to allow Thomas to testify, as the distinction Finn sought to establish was not relevant. Moreover, Finn failed to show that Thomas had first-hand knowledge of the facts

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[7] During his offer to prove, Finn questioned Thomas about the distinction between rights and privileges, an article that Thomas wrote on that subject, the "motor vehicle" definition in 18 U.S.C.A. sec. 31, the Commerce Clause, and the principles of federalism.

of his case and failed to lay any foundation for Thomas's admission as an expert witness. [8]

Judgment affirmed.

MATTINGLY, J., and BAILEY, J., concur.

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[8] When asked about definitions found in the Indiana Code, the following dialogue occurred:

[Thomas]	Well, sir, I know where you are going and there is no point in pursuing it. The Constitution and the Bill of Rights is one thing. The administrative statutes under a corporate municipal government is something else, and that is where you are going and I don't have any business therein. I'm really not concerned, not interested.
[State]	So, you are really only concerned with the federal definition and the federal rights that are reserved?
[Thomas]	Yes.

Record at 321-22.

CLERK
SUPREME COURT, COURT OF APPEALS,
AND TAX COURT
STATE OF INDIANA
217 STATE HOUSE, INDIANAPOLIS, IN 46204
317-232-1930 FAX 317-232-8365

	Cause Number
FINN, GEOFFREY #862352	82A01-0007-CR-00243
P.O. BOX 500	Lower Court Number:
TELL CITY, IN 47586	82C019810CF962

FINN, GEOFFREY V. STATE OF INDIANA

You are hereby notified that the COURT OF APPEALS has on this day 1/10/01 ISSUED THE ENCLOSED WRIT OF CERTIORARI AND ORDER:

WITNESS my name and the seal of said Court, this 10TH day of JANUARY, 2001

"s/Brian Bishop"
Clerk Supreme Court, Court of
Appeals and Tax Court

IN THE
COURT OF APPEALS OF INDIANA

GEOFFREY FINN, Appellant,	)	
vs.	)	CAUSE NO.
	)	82A01-0007-CR-243
STATE OF INDIANA, Appellee.	)	

WRIT OF CERTIORARI

STATE OF INDIANA,

TO THE CLERK OF THE VANDERBURGH CIRCUIT COURT GREETINGS:

WHEREAS, the Appellant, *pro se*, has filed a Request for Transmission of Jury Instructions; and

WHEREAS, the Court of Appeals of Indiana has determined that a Writ of Certiorari should be issued to the Clerk of the Vanderburgh Circuit Court for the production of the jury instructions in this case, which said Writ is in the following words and figures, to-wit:

ORDER FOR WRIT OF CERTIORARI

Comes now the Appellant, *pro se*, and files herein h uest for Transmission of Jury Instructions, alleging therein that his previous counsel filed a praecipe requesting the trial court to prepare and certify a complete transcript of the entire record; that thereafter, after the Appellant was granted leave to proceed *pro se* , he sent a praecipe to the trial court clerk asking for the transmission of the jury instructions which had not been produced, which said Request is in the following words and figures, to-wit:

(H.I.)

And the Court, having examined said Request and being duly advised, now FINDS AND ORDERS that the Clerk of the Vanderburgh Circuit Court should be and she is now ordered to make, certify, and transmit to the Clerk of the Court of Appeals of Indiana, true and complete copies of the jury instructions that were used by the trial court in Cause No. 81C01-9810-CF-962, said transmission to be made to the Clerk of the Court of Appeals of Indiana no later than twenty (20) days from the date of this Writ of Certiorari.

IT IS SO ORDERED this 10th day of January, 2001.

"s/John T. Sharpnack"
Chief Judge

NOW, THEREFORE, pursuant to the above recited Order of the Court of Appeals of Indiana, you are hereby Ordered and commanded to make, certify, and deliver to the Clerk of the Court of Appeals of Indiana true copies of the matters as described in the above Order of said Court.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 10th day of January, 2001.

"s/Brian Bishop"
BRIAN BISHOP, CLERK
COURT OF APPEALS
OF INDIANA

UNITED STATES CONSTITUTION

Article Six, Clause Two, U.S. Constitution

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under Authority of the United States, shall be the Supreme law of the land; and the judges in every state shall be bound thereby, any Thing in the Constitution or Laws of any state to the contrary notwithstanding.

Fifth Amendment, Bill of Rights

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Sixth Amendment, Bill of Rights

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Fourteenth Amendment, Section 1, U.S. Constitution

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

CHARGING STATUTES

Count I Indiana Code 9-30-10-17 Operating motor vehicle while privileges are forfeited for life; Class C felony.

Count II Indiana Code 35-44-3-3(b)(1) Resisting law enforcement; class D felony if, while committing it, the person...operates a vehicle* in a manner that creates a substantial risk of bodily injury to another.

Count III Indiana Code 9-30-5-2 Operating a vehicle while intoxicated; Class A misdemeanor.

OTHER STATUTES INVOLVED

Indiana Code 9-13-2-105(a) Motor vehicle means, except as otherwise provided in this section, a vehicle that is self-propelled. The term does not include a "farm tractor" or "implement of husbandry".

Indiana Code 9-13-2-118 Operator

Sec. 118. (a) "Operator" means, except as provided in subsection (b), when used in reference to a motor vehicle, a person, other than a chauffeur or a public passenger chauffeur, who:

---

* Motor vehicle is element of all three counts.

(1) drives or is in actual physical control of a motor vehicle upon a highway; or
(2) is exercising control over or steering a motor vehicle being towed by a motor vehicle

California Statutes. Forty Sixth Session, Chapter 412, § 1 (b)
The word 'operator' shall include all persons, firms, associations, and corporations who operate motor vehicles upon any public highway of this state and thereby engage in the transportation of persons or property for hire or compensation, but shall not include any person, firm, association or corporation who solely transports persons to and from or to or from attendance upon any public school, or solely transports his or its own property, or employees, or both, and who transports no persons or property for hire or compensation.

18 U.S.C. chapter 2, section 31: "Motor Vehicle" means every description of carriage or other contrivance propelled or drawn by mechanical power and used for commercial purposes on the highways in the transportation of passengers or passengers and property;

"Used for commercial purposes" means the carriage of persons and property for any fare, fee, rate, or other consideration, or directly or indirectly in connection with any business or other undertaking intended for profit.

28 U.S.C. § 1257 (a) State Courts; certiorari
(a) Final judgements or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is

specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

28 U.S.C. 2102 Priority of criminal case on appeal from State court

Criminal cases on review from State courts shall have priority, on the docket of the Supreme Court, over all cases except cases to which the United States is a party and such other cases as the court may decide to be of public importance.

INDIANA CONSTITUTION

Article One, Section Nineteen

Section 19. In all Criminal cases whatever, the jury shall have the right to determine the law and the facts.